

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MILTON HOLMES, Individually and On
Behalf of a Similarly Situated Class of
African Americans,

Plaintiff,

VS.

§ CIVIL ACTION NO. H-10-4841

SERVICE CORPORATION
INTERNATIONAL,

Defendant.

ORDER

This is an employment-discrimination case involving the funeral-services industry. On September 21, 2012, plaintiff Milton Holmes moved for class certification. (Docket Entry No. 52). Holmes, who is African American, seeks to certify a class of applicants and would-be applicants who are African American and who were either rejected or dissuaded from applying for management positions at defendant Service Corp. International (“SCI”)’s funeral-home locations that historically served a predominately non-African American clientele. This court heard oral argument on the class-certification motion on December 18, 2012, and ordered Holmes to amend his complaint to be consistent with the positions taken and relief sought in his class-certification motion, briefs, and argument. (Docket Entry No. 70).

On October 3, 2012, Holmes supplemented his class-certification motion to alert this court to a newly issued case, *Ellis v. Costco Wholesale Corp.*, No. C-04-3341 (N.D. Cal. Sept. 25, 2012), in which the district court certified a class based on a “hybrid” of Rule 23(b)(2) and Rule 23(b)(3)

of the Federal Rules of Civil Procedure. (Docket Entry No. 53). SCI moved to strike the supplement on the grounds that Holmes had not moved for class certification under Rule 23(b)(2) and that Holmes had not sought leave for the filing. (Docket Entry No. 54). Holmes responded. (Docket Entry No. 61). On November 16, 2012, Holmes filed an unopposed motion for leave to file a supplemental brief citing new evidence in support of the class-certification motion. (Docket Entry No. 65). SCI filed a supplemental response in light of the new evidence. (Docket Entry No. 68).

Based on the motions, the responses, and the arguments of counsel at the class-certification hearing, SCI's motion to strike is denied and Holmes's motion for leave to file a supplemental brief is granted. Holmes's motion for class certification is under advisement.

SIGNED on December 20, 2012, at Houston, Texas.



Lee H. Rosenthal
United States District Judge